

<p style="text-align: center;"><b>Chapter IX</b> <b>CONFIDENTIALITY OF INFORMATION</b> <b>707 KAR 1:360</b></p>
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## **SECTION 1. ACCESS RIGHTS.**

### **Inspection and Review of Educational Record**

A LEA shall permit a parent to inspect and review any education records relating to his child that are collected, maintained, or used by the LEA. The LEA shall comply with a request without unnecessary delay and before any ARC meeting or due process hearing and in no case more than forty-five (45) days after the request has been made.

An educational agency or institution shall give full access rights under the ACT to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights. (§ 99.4. FERPA)

An LEA may presume that a parent has authority to inspect and review records relating to his child unless the LEA has been advised under a court order that the parent does not have the authority.

"Eligible student" means a student, or a former student, who has reached the age of eighteen (18) or is pursuing an education beyond high school and therefore the permission or consent required of, and the rights accorded to the parents of the student {records rights} shall therefore be required of, and accorded to, the student. (KRS 160.700)

The KLEA permits parents to review and inspect any educational records related to the identification, evaluation, and placement of their child, or the provision of a free appropriate public education to the child which are collected, maintained, or used by the district. The same access rights apply to the eligible student.

The KLEA does not prohibit a parent from access to the educational records of a child unless the district is presented with written evidence of a court order relating to such matters as divorce, separation, or custody that specifically revokes the parental rights of record review/access. (See also Chapter VII, Procedural Safeguards, Section 1)

### **Education Records**

"Education Records" means records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232(g).

Education Records (§ 99.3)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

Education records means:

Those records, files, documents, and other materials that are:

- (1) Directly related to a student; and
- (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

"Education record" means data and information directly relating to a student that is collected or maintained by educational institutions or by a person acting for an institution including academic records and portfolios, achievement tests; aptitude scores; teacher and counselor evaluations; health and personal data; behavioral and psychological evaluations; and directory data... (KRS 160.600(3))

### Test Protocols and Raw Data

Copyrighted test protocols and raw data generated by evaluators are educational records according to FERPA that are maintained in secure areas and are not released to others during the evaluation process. To the extent that test protocols are integral to understanding the test results or establishing the validity of test results, the test protocols may be shown to and discussed with parents by the qualified examiner upon request of parents. In order to abide by copyright laws and protect test validity and security, it is not required for a school to provide copies of test protocols to parents as long as access to this information is afforded in this manner.

### Private Notes

Notes or documents in the sole possession of the creator are exempt from parent or eligible student access in accordance with FERPA if the following criteria are met:

- a. it is a private note created solely by the individual possessing it,
- b. it is a personal memory aid, and
- c. contents are accessible to or revealed to no one except the possessor's temporary substitute.

If another person, such as a teacher or principal, is knowledgeable of the contents of these notes, then they are subject to review by parents or the eligible student. Oral communication from such notes or documents makes the documents an educational record and accessible to parents for review, even if these are maintained in the sole possession of the creator.

### **Access to Educational Records**

If the parent or representative presents a request and all requested records are present and readily available, then the parent or representative is granted immediate access. A private place for review and inspection of records shall be provided to parent upon request

If the records are not readily available, then within **two (2) business days**, the principal notifies the parent in writing of a designated time and place for the parent, or designated representative, to review and inspect the educational records of the child. The retrieval and access of the child's educational records are provided:

- a. without any unnecessary delay;
- b. within 45 calendar days from the time principal receives the request;
- c. before any ARC meeting or due process hearing takes place; and
- d. at a time mutually acceptable to the parent and the principal.

### **Explanation and Interpretation of Records**

The right to inspect and review education records under this administrative regulation shall include:

- (a) the right to a response from the LEA to reasonable requests for explanations and interpretations of the records;
- (b) the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (c) the right to have a representative of the parent inspect and review the records.

If the parent requests an explanation, the principal makes sure that the appropriate staff member (e.g., DoSE, school psychologist, counselor, or special education teacher) is present to explain and interpret the records and answer any questions the parent may have.

If the primary language or mode of communication used by the parent of the child is not English, then within **five (5) calendar days** of a completed parental request to review the educational records of a child, the principal notifies the DoSE of the need for translation of the records. The DoSE obtains the translation prior to any ARC meeting or due process hearing. Every attempt is made to obtain the translation within **forty (40) calendar days** after the request is made. This translation is consistent the mode of communication used by the parent and therefore may include a recorded or oral reading format.

### **Copies of Records**

The parent receives a copy of each evaluation and reevaluation report, each eligibility report, each IEP and each Conference Summary following the ARC meeting when each specific document is initially discussed or developed. These initial copies are provided to the parent free of charge. See Section 5 regarding fees for copies of records.

### **Representative of Parent to Inspect and Review Records**

If the parent authorizes an individual to serve as the parent's representative to inspect and review the records, then the parent completes the Consent for the Release of Information form provided by KLEA. When this release of information form is appropriately signed by the legal representative of the child, the KLEA grants the authorized representative access to the educational records of the child. If copies of records are provided, a fee may be charged. (see Section 5).

## **SECTION 2. RECORD OF ACCESS.**

### **Documentation Required**

A LEA shall keep a record of parties obtaining access to education records collected, maintained, or used under 707 KAR Chapter 1(except access by parents and authorized employees of the LEA), including:

- (1) the name of the party;
- (2) the date access was given; and
- (3) the purpose for which the party is authorized to use the records.

The building principal or designee maintains a Record of Disclosures form in each child's cumulative folder (educational record) as long as the records are maintained. The record of access form includes:

- a. the name of the person who obtained access to the record;
- b. the date the person was given access to the record;
- c. the purpose for which the party is authorized to use the records.

All individuals, except parents, eligible students, and employees of the KLEA with a legitimate educational interest in the records, sign the record of disclosures form immediately prior to inspecting and reviewing the record. The parent consent for that person to review the records, or for records to be sent to that person, is referenced on the form and placed in the file.

### **Officials of the KLEA with Legitimate Educational Interest**

Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part. The notice must inform parents or eligible students of ...the specific criteria for determining who constitutes a school official and what constitutes a legitimate education interest. (§ 99.7 (a)(3)(iii), FERPA)

The KLEA specifies those role groups who are determined to be officials of the KLEA and who therefore may have a legitimate educational interest (dependent upon the specific circumstances of a child) and are entitled to student record access in the performance of their duties. Example: "A school official is a person employed by the district as an administrator, supervisor, instructor, or support staff member (including health or medical staff and school resource officers); a person serving on the School Board; a person or company with whom the KLEA has contracted to perform a special task (such as an attorney, medical consultant, or therapist); or personnel assisting another school official in performing his/her assigned tasks. A school official has a legitimate educational interest if the official needs to review an educational record in order to fulfill his/her professional responsibility." **This determination statement is published in the District Student Handbook and annually distributed to parents of enrolled students and eligible students.**

### **SECTION 3. RECORDS ON MORE THAN ONE CHILD.**

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of only that specific information.

The KLEA provides information from records containing data on more than one child in such a way as to preserve the confidentiality of the other students.

If a parent requests to review and inspect educational records that have information about more than one child (e.g., attendance rosters, child tracking systems, grade books, etc.), then the person responsible for the maintenance of those records makes certain that any personally identifiable information regarding other children is not disclosed.

The KLEA ensures that personally identifiable information about any child is not maintained in the educational record of another child

#### **SECTION 4. TYPES AND LOCATION OF INFORMATION.**

A LEA shall provide parents on request a list of the types and location of education records regarding their child with disabilities that is collected, maintained, or used by the LEA.

The DoSE maintains a list of the types and location of educational records for children with disabilities collected, maintained and used by the KLEA. The list, which is kept **in the office of the DoSE**, specifies the type of information, (e.g. due process folder, speech folder, psychological/evaluator records), the location (specific school or office) and contact person where each record is located. If requested, the information regarding the records of their child is made available to a parent.

#### **SECTION 5. FEES.**

A LEA may charge a fee for copies of records that are made for a parent under 707 KAR Chapter 1 (special education regulations) if the fee does not effectively prevent the parent from exercising his right to inspect and review the records.  
The LEA shall not charge a fee to search for or to retrieve information under 707 KAR Chapter 1.

A fee is charged to the parent for requests for copies of records, as long as the fee does not effectively prevent the parent from inspecting or reviewing the records. A fee is not charged for record search or retrieval. **Reference KLEA Board Policy for method of fee determination.** (See Section 1, Copies of Records)

#### **SECTION 6. AMENDMENT OF RECORDS AND OPPORTUNITY FOR HEARING.**

##### **Request to Amend Information in Education Records**

A parent who believes that information in the education records collected, maintained, or used under 707 KAR Chapter 1 (special education regulations) is inaccurate, misleading, or violates the privacy or other rights of the child may request the LEA to amend the information.

Record amendment refers to changing, deleting, or destroying information in the educational records of a child or youth.

If a parent requests an amendment of records, then the KLEA Representative documents the request, the date of the request, and the reason the request was made.

Within **ten (10) business days** of receipt of the written parental request, the KLEA Representative, the DoSE, and other KLEA personnel as needed, meet with the parent to discuss the parent's request, and review the record.

If, after the meeting, the KLEA decides to amend the information, then the DoSE informs the parent in writing of the decision and amends the record **within ten (10) business days** of the decision to amend the child or youth's educational record.

If, after the meeting, the KLEA decides not to amend the information in accordance with the parent's request, then **within ten (10) business days** of the decision not to amend, the DoSE provides a written explanation to the parent and advises the parent of the right to a records amendment hearing. The written explanation includes a full and complete description of the record amendment hearing procedures used by the KLEA and explains to the parent that such a hearing is not a due process hearing.

#### **Request for Record Amendment Hearing**

If a request to amend the information is made by a parent or legal guardian, the hearing procedures contained in 702 KAR 1: 140 shall apply.

Upon request, the school district shall arrange for a hearing to be held within thirty (30) days after the request for hearing and notify the student's parents(s) or guardian, reasonably in advance, of the date, place, and time of the hearing. The hearing shall be conducted by a hearing officer who is a disinterested party and is a certified official of the district appointed by the Superintendent. (702 KAR 1:140)

Upon request by a parent for a record amendment hearing, the KLEA provides an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or youth.

Within **five (5) business days** of receipt of the parent's request for a hearing, the Superintendent appoints a KLEA certified staff member of KLEA who is a disinterested party to conduct the hearing. The DoSE and the person appointed to conduct the hearing schedule the hearing to occur within thirty (30) calendar days of the date the request for a hearing was received.

A disinterested party is defined as a person who:

- a. will not benefit or suffer if the decision is for the child and against the KLEA, or for the KLEA and against the child; and
- b. has no direct responsibility or authority for supervision of the child or personnel involved with the child.



### **Conduct of Hearing**

The KLEA conducts a hearing to challenge information in educational records on the following timetable:

- a. The hearing is held within thirty (30) calendar days of the date of receipt of the parent's written request for a hearing.
- b. The person conducting the hearing provides the parent written notice of the meeting, including the date, time, and place, at least **seven (7) calendar days** in advance of the hearing.
- c. The person conducting the hearing issues the decision in writing to the parent and appropriate KLEA staff **within ten (10) business days** following the date of the hearing.

The hearing shall be private. Persons other than the student, parent(s), witnesses, and counsel shall not be admitted into the hearing. The hearing officer shall hear evidence from the school staff and the student's parent(s) or guardian to determine any points of disagreement regarding the records. The student's parent(s) or guardian shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's educational records. The parent(s) or guardian may be assisted by one (1) or more individuals, including an attorney. (702 KAR 1:140)

The hearing provides the parent or eligible student a full and fair opportunity to present relevant evidence. This includes the opportunity to:

- a. present witnesses, question school employees, and provide oral testimony or written evidence as to the inaccurate or misleading information in the educational records; and
- b. be represented by one or more persons at their own expense, including an attorney.

The individual conducting the hearing then allows the DoSE and/or KLEA Representative to present evidence and testimony, and to question witnesses.

The decision of whether or not to amend an educational record is based solely on the evidence presented at the hearing and the applicable law.

### **Result of Record Amendment Hearing**

The hearing officer shall make a determination after hearing the evidence in writing within ten (10) working days following the close of the hearing. The hearing officer shall make a determination based solely on the evidence presented at the hearing, and shall include a summary of the evidence and the reason for the decision. The parties to the hearing shall be provided a copy of the hearing officer's decision. (702 KAR 1:140) If, as a result of the hearing, the hearing officer decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the school district shall amend the information accordingly, and inform in writing the student's parent(s) or guardian of the amendment. (702 KAR 1:140)

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The DoSE, in cooperation with the KLEA Representative, is responsible for amending the information in accordance with the decision of the Hearing Officer. The DoSE will inform the parent that the amendment of records has been completed. The KLEA maintains the documents related to the actual hearing separate from the educational records of the child or youth and destroys the records in accordance with the Public School Records Retention Schedule from the KY Archives agency. (See Section 9, Destruction of Records)

If the hearing officer decides after the hearing the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the hearing officer shall inform the student's parent(s) or guardian of the right to place a statement in the record commenting on the contested information or stating why he disagrees with the decision of the hearing officer. The statement shall be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the record, it shall also disclose the statement. (702 KAR 1:140)

The DoSE, in cooperation with the KLEA Representative, is responsible for assuring that any statement received from the parent(s) is placed in the child's education record, and identified in a manner that will ensure its appropriate disclosure whenever the record is disclosed in the future.

### SECTION 7. CONSENT

**Procedures for obtaining consent apply to all students, including students with disabilities. Refer to board policy. (Insure that red statements below are consistent with board policy.)**

#### Written Parental Consent

Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 14, parental consent shall be obtained before personally identifiable student information is:

- (a) disclosed to anyone other than officials of the participating agencies collecting or using the information under 707 KAR Chapter 1; or
- (b) used for any purpose other than meeting a requirement under 707 KAR Chapter 1.

The written consent must:

- a. Specify the records that may be disclosed;
- b. State the purpose of the disclosure; and
- c. Identify the party or class of parties to whom disclosure may be made. (§ 99.30 FERPA)

The KLEA obtains written parental consent before disclosing personally identifiable information to individuals or agencies other than those indicated on the disclosure without consent list (see the next paragraph). The Consent for Release of Information form provided by the KLEA is available in the Principal's Office of the school the child attends and in the office of the DoSE. The form includes the signature of the parent or eligible student and the date the consent is signed. Copies of the completed forms are

maintained in the educational records of the specific child.

### **Disclosure Without Consent**

The KLEA discloses personally identifiable information from the educational records without the written consent of the parent, if the disclosure is in accordance with FERPA, § 99.31 and KRS 160.720.

Educational institutions shall not permit the release or disclosure of records, reports, or identifiable information on students to third parties other than directory information as defined in KRS 1600.600, without parent or eligible student consent except to:

- (a) Other school officials, including teachers, with legitimate educational interests and purposes.
- (b) Other school systems, colleges and universities to which the student has sought enrollment or transfer or from which the student was graduated.
- (c) Federal, state, or local officials who carry out a lawful function and who are authorized to receive this information pursuant to statute or regulation. This authority includes requests from any agency of the federal or state government for the purposes of determining a student's eligibility for military service.
- (d) Federal, state, or local officials to whom the information is required to be disclosed. {e.g. to comply with a judicial order or lawfully issued subpoena,; child abuse investigation, etc.}
- (e) Individuals or organizations conducting legitimate studies, surveys, and data collection in such a manner so as not to permit personal identification of parents or students.
- (f) Accrediting organizations enlisted to carry out accrediting functions.
- (g) Parents of a dependent student of the parent as defined in Section 152 of the Internal Revenue Code of 1954 (26 U.S.C. sec 152) (KRS 160.720)

### Release of Education Records to Another School District

The notice to parents of enrolled students and eligible students of their rights under FERPA includes a statement that the KLEA releases educational records, without parent consent, of a child who seeks to or enrolls in another school district. When a child seeks to enroll or does enroll in another school district, then within 5 business days of receipt of a documented request for the transfer of records, the building principal or designee transfers the regular education and special education records of the child. This request may be made by:

- a. the parent;
- b. the eligible student; or
- c. personnel of the receiving school.

Requests for records of a child with a disability from another school district may be accepted in writing, by facsimile, or phone. A parent consent to release records is not required. Upon receipt of this request from the receiving district, the principal or designee provides copies of the following special education records:

- a. the current IEP, including all progress monitoring data & progress reports;
- b. Conference Summaries that pertain to the current IEP;
- c. Parent Consent to Conduct Evaluations and provide special education services;
- d. the initial evaluation and the most recent reevaluation; and
- e. the parent's consent to bill for Medicaid services, if applicable to the child.

The original of all special education records is then placed in an inactive file in the school.

If a parent or eligible student makes a request to the principal of the school for a copy of the educational records that have been transferred, then the KLEA provides a copy of all transferred records free of charge.

If a child transfers to another school within the KLEA, the entire special education record is transferred to that school.

### Directory Information

"Directory information" means the student's name; address; telephone listing; date and place of birth; participation in school recognized activities and sports; weight and height of members of athletic teams; dates of attendance; awards received; major field of study; and the most recent previous educational agency or institution attended by the student; contained in educational records in the custody of the public schools. (KRS 160.700)

An educational institution may publish and release to the general public directory information relating to a student. An educational institution shall give public notice of the categories of directory information that it has designated as directory information with respect to each student in attendance and shall allow a reasonable time after the notice has been given for a parent or eligible student to inform the institution that any or all of the information designated should not be released without prior consent.  
(KRS 160.725)

The KLEA gives this notice to parents of enrolled students and eligible students through publication in the District Student Handbook (check board policy for consistency.) If a parent or eligible student provides the building principal or the DoSE written directions not to release specific directory information in accordance with the terms of that notice, then the directory information for the child is not released. Copies of the parent or eligible student's instructions are maintained in the Director of Pupil Personnel's office, and in the school the child attends.

If a parent or eligible student so requests, the principal provides the parent or eligible student a copy of the records the KLEA discloses. These copies are provided to the parents and eligible students free of charge.

Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.  
(§ 99.7, FERPA)

The public notice informs parents and eligible students of the following regarding directory information:

- a. the types of personally identifiable information that the agency has designated as directory information;
- b. a parent or eligible student's right to refuse to let the agency designate any or all of those types of information about the student as directory information; and
- c. the period of time within which a parent or eligible student has to notify the agency in writing that he or she does not want any or all of those types of information about the student disclosed as directory information. (§ 99.37, FERPA)

The KLEA may disclose directory information about former students without meeting the conditions in the previous paragraph.

**Emergency May Warrant Disclosure Without Consent**

An education agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. § 99.36 (a), FERPA)

If an emergency arises in which it is necessary to protect the health and safety of a child or other individuals, then the KLEA discloses personally identifiable information from the educational records of the child to the appropriate parties connected to the emergency.

In determining whether or not an emergency exists which would warrant the disclosure of educational records, the building principal considers the following factors:

- a. the seriousness of the threat to the health or safety of the child or youth or other individuals;
- b. whether the information is needed in order to take action during the emergency;
- c. whether the individuals to whom the information is disclosed are in a position to act during the emergency; and
- d. the extent to which time is of the essence in dealing with the emergency.

Upon determination by the building principal or designee that the situation at hand is an emergency and warrants the disclosure of educational records, the building principal or designee obtains the records of the child and makes them available to the appropriate parties immediately.

**Other Conditions for Release of Personally Identifiable Information**

An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to another party without the prior consent of the parent or eligible student... An education agency shall inform a party to whom disclosure is made of the requirements of this section. (§ 99.33 FERPA)

In disclosing personally identifiable information from educational records other than to parents of students under eighteen (18), to the eligible student, or when releasing

directory information, the KLEA informs the party to whom the disclosure was made that use and disclosure of the information is subject to FERPA requirements. The building principal or designee assures that the following statement is included with the information that is released: "This information is an education record and is therefore subject to requirements of the Family Education Rights and Privacy Act."

Any information received by the KLEA is used only for the purposes for which the disclosure was made.

Prior to re-disclosing any information in an education record that was obtained from another source, the KLEA Representative contacts the parent or eligible student in order to obtain the parent or eligible student's written consent for re-disclosure. The parent or eligible student completes the Consent for Release of Information form prior to the re-disclosure of any information.

### **Parent Refusal to Release Information**

If a parent refuses to provide consent for release of personally identifiable information, a party may request a due process hearing under the provision of 707 KAR 1:340 or comply with the FERPA.

If a parent refuses to give consent for the disclosure of educational records needed to provide a free appropriate public education, and the KLEA disagrees with the parent's refusal for disclosure, then the KLEA may request a due process hearing (See Chapter VII, Procedural Safeguards, Section 4).

Compliance with FERPA means that KLEA complies with the disclosure without consent requirements as stated in the previous section of this Chapter regarding Disclosure without Consent.

### **SECTION 8. SAFEGUARDS.**

A LEA shall protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.

### **Records Security**

The KLEA ensures that the confidentiality of personally identifiable information is protected and that unauthorized access is prevented at the following stages:

- a. collection (e.g., during handling of referrals);
- b. storage (e.g., secure files, protection of computer files);
- c. disclosure (e.g., during access to records); and
- d. destruction (e.g., during the process of records destruction as defined by the Records Retention Schedule)

### **Persons Responsible for Ensuring Confidentiality**

A LEA shall assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information.

The **Director of Pupil Personnel (DPP)** is responsible for ensuring the confidentiality of personally identifiable information for all students. The DoSE is responsible for the general supervision of all educational records related to children or youth with disabilities; the building principals have responsibility for all records maintained at the building level even though teachers may have custody of the records.

### **Training Regarding Confidentiality Issues**

A LEA employee collecting or using personally identifiable information shall receive training or instruction regarding 707 KAR 1:360 (confidentiality of information).

The DPP and DoSE make arrangements for persons collecting or using personally identifiable information to receive training regarding the KLEA's policies and procedures for ensuring confidentiality prior to those persons having access to educational records. Within thirty (30) calendar days prior to the start of school, all KLEA administrative staff are trained regarding the KLEA's policies and procedures for confidentiality. Within thirty (30) calendar days of the start of school, all other KLEA personnel who have access to educational records are trained by the building principal or designee, regarding the KLEA's policies and procedures regarding confidentiality. When new staff are employed later during the school year, it is the responsibility of the individual's immediate supervisor to provide training in confidentiality issues for the new employee.

Training will also be provided for volunteers, and any others who may have access to personally identifying information for students, such as mentors, foster grandparents, student teachers, etc.

### **Listing of Persons Who May Have Access**

A LEA shall maintain, for public inspection, a current listing of the names and positions of employees within the LEA who may have access to personally identifiable student information.

It is the responsibility of the DPP and DoSE to ensure that there is a listing of all persons identified as “school officials” (as defined in Section 2) who may have a legitimate educational interest and thus access to educational records. This may be accomplished by providing listings of all certified staff, paraprofessionals who assist teachers with instructional tasks, school board members, board attorney, special education cooperative staff, contracted staff, etc. It must be recognized that any specific individual would not have access to all student records, but only those for whom a legitimate educational interest can be determined.

## **SECTION 9. DESTRUCTION OF INFORMATION**

A LEA shall inform the parent when personally identifiable student information collected, maintained, or used under 707 KAR Chapter 1 (special education regulations) is no longer needed to provide education services to a child. The information shall be destroyed at the request of a parent. However, a permanent record of a child's name, address, and phone number, his grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitations.

### **General Notification to Parents of all Students**

The KLEA defines "destruction" in terms of physical destruction or removal of personal identifiers from records so that the information is no longer personally identifiable and as a means for protection against improper or unauthorized use.

The KLEA informs parents in writing when educational records are no longer needed for educational services. For example, "The KLEA will destroy the educational records of a child without a parent's request after the records have been maintained for the number of years specified by the Records Retention Schedule, and following the time when the records are no longer needed to provide educational services." This statement is published in the District Student Handbook and annually distributed to parents of enrolled children and eligible students.

Following the requirements of the Records Retention Schedule, the principal is responsible for initiating the appropriate process for the destruction of educational records.

### **Parent Request for Destruction of Records**

If a parent requests the destruction of records, the Principal, or designee who has been trained in confidentiality, destroys the records only in accordance with the requirements of the Records Retention Schedule. This Schedule, which governs the destruction of all school records, specifies that special education records must be maintained for a specific number of years after the last activity involving special education services for the specific child. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained indefinitely.

If a parent requests destruction, the KLEA does not destroy any records:

- a. that have not been retained for a minimum period of time since the last activity (see Records Retention Schedule);
- b. if there is an outstanding request to inspect or review the records;
- c. if there is an unresolved finding of noncompliance in a program or fiscal audit; or
- d. if the records are needed for planning and implementing an individual educational program to demonstrate compliance with applicable state and federal requirements.



If the parent of a child or youth with disabilities requests the destruction of records, then the KLEA Representative or designee informs the parent or eligible student that the records may be needed to establish social security benefits or other purposes.

**SECTION 10. CHILDREN’S RIGHTS.**

The rights of parents regarding education records under FERPA and 707 KAR Chapter 1 (special education regulations) shall be transferred to the child at the age of eighteen (18), unless the child has been declared incompetent under KRS Chapter 387 in a court of law.

At least one year before a youth's eighteenth (18<sup>th</sup>) birthday, the KLEA Representative provides notice to the parent that the rights regarding review, inspection, and disclosure of records will transfer to the youth at the age of eighteen (18) unless the parent provides the KLEA with evidence that there is a court order showing the parent as the guardian of or a youth's representative in educational matters. This notification is documented on the Conference Summary report.

The KLEA does not disclose educational records of a youth over the age of eighteen (18) to the parent without:

- a. the youth's written consent;
- b. a court order; or
- c. proof that the youth is a dependent student as defined in Section 152 of the Internal Revenue Code of 1954. (§ 99.31(a)(8) FERPA).

**CONFIDENTIALITY OF INFORMATION RESOURCES**

**OSEP and IDEA Partnership Approved Materials:**

Family Policy Compliance Office (FERPA)  
<http://www.ed.gov/offices/OM/fpc/>

**Relevant KY Statutes and Regulations:**

KRS Chapter 387 (Declaration of Incompetence)

KRS 160.700 through 160.730 (KY Family Education Rights and Privacy Act)

702 KAR 1:140 (Student records; hearing procedures)

**Pertinent Case Law:**

Falvo v. Owasso Indep. Sch. Dist. 1-011, 33 IDELR 152 (10<sup>th</sup> Cir. 2000)  
A teacher's practice of allowing students in her classroom to grade each other's tests and other papers and to call out their own grades violated the Family Education Rights and Privacy Act.